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SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-third session

SUMMARY RECORD OF THE 35th MEETING (FIRST PART*)

Held at the Palais des Nations, Geneva,
on Thursday, 29 August 1991, at 3 p.m.

Chairman: Mr. JOINET

later: Mr. TURK

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Review of further developments in fields with which the Sub-Commission has been concerned (continued)

* The summary record of the second part of the meeting appears as document E/CN.4/Sub.2/1991/SR.35/Add.1

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The meeting was called to order at 3.20 p.m.

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN CONCERNED (agenda item 4) (continued) (E/CN.4/Sub.2/1991/5; E/CN.4/Sub.2/1991/6; E/CN.4/Sub.2/1991/7; E/CN.4/Sub.2/1991/8; E/CN.4/Sub.2/1991/9; E/CN.4/Sub.2/1991/10; E/CN.4/Sub.2/1991/48; E/CN.4/Sub.2/1991/55; E/CN.4/Sub.2/1991/NGO/11; E/CN.4/Sub.2/1991/NGO/15; E/CN.4/Sub.2/1991/NGO/22; E/CN.4/Sub.2/1991/NGO/32; A/46/171-E/1991/61; E/CN.4/Sub.2/1990/9; E/CN.4/Sub.2/1990/10; E/CN.4/Sub.2/1990/11; E/CN.4/Sub.2/1990/12; E/CN.4/Sub.2/1989/42 and Add.1; E/CN.4/Sub.2/1987/31)

1. Mrs. ROWAN (International Centre on Censorship - Article 19) said that she fully agreed with the report on the right to freedom of opinion and expression prepared by Mr. Türk and Mr. Joinet (E/CN.4/Sub.2/1991/9) and with Mrs. Ksentini's report on human rights and the environment (E/CN.4/Sub.2/1991/8). The study on the right to freedom of opinion and expression could contribute to ensuring more effectively protection of the right to expression and to curbing the restrictions that often accompanied that right. The anti-censorship associations could invoke passages from it - for example, paragraph 23 which said that a person imprisoned on the sole grounds that he had expressed his opinion was of necessity detained arbitrarily - during campaigns to secure the release of prisoners of opinion. She referred also to paragraph 54 which raised the question of proportionality of the restriction to the legitimate objective pursued. The analysis of military censorship in time of war was particularly interesting and innovative.

2. She gathered that the United States' delegation and some NGOs were concerned that Mr. Türk and Mr. Joinet had placed undue emphasis on the restrictions on the right to freedom of expression instead of seeking to extend that right. She also shared that concern and pointed out that there were areas in which the right to freedom of expression should be extended. For example, a decision of the United States Supreme Court should not be able to prohibit doctors and orthogenetic centres from providing factual information on abortion, as had occurred recently; in that connection, she hoped that the Special Rapporteurs could explain exactly what were the limits to the right "to seek, receive and disseminate ... information", which was an integral part of the freedom of expression as defined in article 19 of the Universal Declaration of Human Rights.

3. She also drew the Special Rapporteur's attention to another matter that she would like to be addressed, namely, the question of the specific rights of journalists and of persons investigating human rights violations - for example, the right to respect the confidentiality of information sources or the right to enter regions where human rights violations were taking place.

4. Mr. GROSSE (International Federation of Human Rights) drew the Sub-Commission's attention to the fact that the environment was not being respected in the federated State of Sarawak, Malaysia, where his organization had recently sent a mission. For the indigenous populations, the danger that the primal forest might disappear should, in his view, be examined in terms of violations of human rights because rights such as land ownership for example, could be cancelled for reasons of public interest and in order to simplify

expropriation; population movements especially affected indigenous populations; their inability to preserve their traditional lifestyle constituted a denial of their cultural identity. The Penans, a nomadic people, were a case in point. They depended on hunting, fishing and gathering fruit. At present, they were unable to find enough food and at the same time were holding out against the sedentarization being imposed on them. He called upon the Malaysian and Sarawak authorities to take steps to end the systematic destruction of the primal forest and to safeguard the fundamental rights of the indigenous population and he hoped that the Sub-Commission would take up the matter.

5. He welcomed Mrs. Ksentini's report (E/CN.4/Sub.2/1991/8) on human rights and the environment because he felt that, as a rule, it was absolutely vital that the right to information should be respected, to allow people time to react in good time to projects that might well harm the environment. He was therefore very pleased that the preliminary report on freedom of expression drafted by Mr. Türk and Mr. Joinet (E/CN.4/Sub.2/1991/9) had been updated and he congratulated them on their approach to that question.

6. Mr. KOVEN (World Press Freedom Committee) speaking on behalf of the 34 associations of journalists on five continents constituting the World Press Freedom Committee referred to the concepts of "permissible restrictions", "democratic necessity", "proportionality", that appeared in the report by Mr. Türk and Mr. Joinet on the right to freedom of opinion and expression (E/CN.4/Sub.2/1991/9). In his opinion those criteria were far too subjective and, by that very fact, dangerous. He could not, for example, accept the distinction made by the Special Rapporteurs between freedom of opinion - which they saw as an absolute right - and freedom of expression - which they saw as a relative right. Both rights were, in fact, fundamental rights and were enshrined in article 19 of the Universal Declaration of Human Rights and normally in national constitutional law. It seemed to him that it was not for the Sub-Commission, or any other international body to establish a hierarchy of human rights. Conflicts between rights were conceivable but extremely rare, and were best left to the courts and not codified. However, that did not mean that the assertion of the freedom of the press as an absolute placed journalists outside the law.

7. He agreed that freedom of opinion and expression was a fundamental right; the matter should have been left there, instead of seeking to define permissible restrictions. The Sub-Commission should endeavour to remove restrictions where they existed rather than try and formulate new definitions. Turning to the question of expressions of racism or revisionism, he said that such views existed and it was better to bring them out in the open where they could be combated with rational arguments. The 15-year long controversy at UNESCO showed that calls for an international charter of the rights and duties of journalists led only to the jusitification of bodies that sought to rule on who might practise journalism. In that connection, he quoted a recent statement by the Director-General of UNESCO, Mr. Federico Mayor, to the effect that journalistic ethics was a field that should be left strictly to the members of the profession.

8. He agreed with the Special Rapporteurs that imprisonment for expressing one's opinion was never justified; on the other hand, he could not agree to the possibility of sanctions for violations of permissible restrictions to freedom of opinion. The Sub-Commission should seek to eliminate restrictions rather than to legitimize them. The idea that the press should be free should be stated simply and clearly, without listing any restrictions, because those who wished to restrict the press needed no further encouragement.

9. Mr. EIDE said, with regard to the report of Mr. Türk and Mr. Joinet on freedom of opinion and expression (E/CN.4/Sub.2/1991/9), that he felt it was important to accept the idea of restricting that freedom, in order to protect the freedom of others. In that connection, he quoted from the Declaration of the Rights of Man and of the Citizen to the effect that individual freedom ended where the freedom of others began. The idea of a limit was therefore inherent in the idea of fundamental rights. At the present stage, an attempt should be made to integrate human rights into a coherent system aimed at structuring society in such a way as to protect the freedom of everyone rather than to make do with a motley assortment of rights.

10. He was anxious to establish a distinction made between freedom of action which could be curtailed by restrictions in the name of the principle of respect for the freedom of others, and the fundamental rights guaranteeing the integrity of the human person from which there could be no derogation. Those restrictions were the very basis of civilization. He supported the approach used by Mr. Joinet and Mr. Türk but feared that it might be misunderstood: what was involved was establishing restrictions on restrictions. There was no way of avoiding restrictions; the important thing was to define legitimate restrictions accurately. As an exhaustive system of human rights was developed, it would be advisable to take a practical approach to the question rather than to cling to abstract and absolute rights which in themselves were unrealizable in any case. One should not, however, go beyond what was absolutely necessary and impose restrictions on restrictions. The methodology used in the study was very interesting and he thought it vital to establish a dialogue between the advocates of unrestricted freedom and the advocates of restricted freedom since they needed to communicate with each other.

11. Turning to the study made by Mrs. Ksentini on human rights and the environment (E/CN.4/Sub.2/1991/8), he said that he was primarily interested in the conceptual part and that he was not entirely convinced that there could be a concept of fundamental right to the environment because of the anthropocentric connotation of such a concept. The deterioration of the environment obviously endangered many fundamental human rights. It was also true that it was the duty of Governments to restore a healthy environment. He was not, however, sure that one could claim that everyone had a fundamental right in respect of the environment. Some thought should be given to the consequences of such a concept, and answers provided to a certain number of questions which would identify the fundamental rights that might be involved, the bodies which would have responsibility for guaranteeing those rights, the corresponding obligations and the procedures for their application. Such a major conceptual issue required more thorough discussion.

12. Regarding Mr. van Boven's study on compensation (E/CN.4/1991/7), he felt that emphasis should be placed on the situations which lent themselves to compensation. Mr. van Boven could use a dual approach. He might first study one part of the question from a general and conceptual standpoint and then address the questions separately progressing from the simplest to the most complicated.

13. Mrs. Warzazi's report on the traditional practices affecting the health of women and children (E/CN.4/Sub.2/1991/6) was, in his view, excellent. Regarding the preference given to male children, he simply wished to say that the Government of his country was headed by a woman and that about 50 per cent of posts in the Government were occupied by women; countries that gave preference to men were depriving themselves of an inestimable source of ability.

14. Lastly, referring to the study prepared jointly by Mr. van Boven and himself on minimum humanitarian standards (E/CN.4/Sub.2/1991/55), and said that the subject needed to be studied more thoroughly next year.

15. Mr. TIAN Jin, speaking on Mrs. Ksentini's report on human rights and the environment (E/CN.4/Sub.2/1991/8) said that he considered the concept of rights in respect of the environment to be extremely important and that thought should be given as to how it might be developed. In respect of the world environment, the developed countries should shoulder their responsibility. The third world which was becoming increasingly poorer was one of the factors in the deterioration of the environment, and that constituted a major problem. A ministerial conference had been held in China on the subject in June 1990.

16. The relationship between the question of the right to life and development and the question of the environment was subtle and complex, and three points should be emphasized. First of all, ecological problems could be resolved only in the context of economic and social development, and that point deserved more detailed study. Secondly, the developed countries had very great responsibility and they should help to solve the problems, for example, by making the necessary resources available to the developing countries. Lastly, the rights of the developing countries over their natural resources should be respected and strong measures taken to ensure that those countries could contribute to the protection of the world environment. He hoped that Mrs. Ksentini would develop her report further and make recommendations.

17. Mr. AL-KHASAWNEH congratulated Mrs. Ksentini on her report on human rights and the environment (E/CN.4/Sub.2/1991/8). He said that he was primarily interested in the conceptual aspect of the question. He pointed out that any right established in respect of the environment would always stand in the way of other rights, for example, the right to development, which he equated with the right to life. Questions of national sovereignty arose because - to give one example - a country was perfectly entitled to build a factory on its territory but the forces of nature had no regard for territorial sovereignty and that same factory could be harmful to the environment of other countries.

18. Confronted with this dilemma, international law was helpless. There were too few international instruments, although Principle No. 21 of the Stockholm Declaration, as well as some chapters of the Convention on the Law of the Sea could be cited; in its present state, however, international law took little account of environmental concerns. International law had been drafted at a time where laissez-faire was the order of the day and it was useless to evoke interdependence, because there were still too few rules. The traditional approach to the question should perhaps be modified. The Latin maxim that the rights of others should not be infringed was also to be found in Muslim law and there it was more important to avoid doing harm than to seek advantages. If provision could be made for reparation when the damage was slight and the advantage considerable, the one would neutralize the other, and harm should be avoided. The very idea of reparation posed a problem, because once the damage was done it was always difficult to return to the status existing before. In the case of an individual, financial compensation could be contemplated, but damage to the environment was irreversible. He therefore emphasized the principle of prevention and said that it should always take precedence over compensation.

19. With respect to Mr. van Boven's preliminary report (E/CN.4/Sub.2/1991/10) and his interim report (E/CN.4/Sub.2/1991/7), he noted with concern that all the references to the work of the International Law Commission cited in the preliminary report were outdated. He pointed out that Professor Arangio-Ruiz's study on the responsibility of States (A/CN.4/440 and Add.1) dealt essentially with the same subject as Mr. van Boven's report and he suggested that Mr. van Boven should consult the work of the eminent professor. Furthermore, the terminology used by Mr. van Boven posed a problem because he very frequently used the word "compensation" or "indemnization" instead of the word "reparation", for example in paragraph 33 of document E/CN.4/Sub.2/1990/10. Indemnization or financial compensation was, he agreed, the more common form of reparation but it was not strictly speaking a form of reparation in the sense of re-establishing the previous situation. He would therefore like Mr. van Boven to pay more attention to the work of the ILC in order to standardize the terminology used.

20. In conclusion, he said that he wished to reply to Mr. Treat, who had raised the same question at a previous meeting. In his opinion, there was no moral or other form of superiority that warranted the use of excessively destructive weapons. There was a great difference between seeking not to expose soldiers to danger needlessly and using weapons such as the fuel bombs that had been used during the Gulf War.

21. Mr. DESPOUY said that he congratulated Mr. Joinet and Mr. Türk on their excellent report on the right to freedom of opinion and expression (E/CN.4/Sub.2/1991/9) in which they addressed the extremely complex legal question of the permissible restrictions on that right in normal situations, in other words in situations other than states of emergency. He regretted that time constraints prevented him from commenting more fully on that part of the report.

22. He also congratulated Mrs. Warzazi on approaching the subject-matter of her report (E/CN.4/Sub.2/1991/6) from the human rights angle. Such an approach was not immediately obvious because it meant, in fact, that the

subject had to be dealt with in the light not only of moral parameters but also legal ones, in other words, extending beyond historical, cultural and religious factors, which could explain certain phenomena. She had also rightly and courageously asserted that, whatever their origins, those practices constituted violations of human rights. He himself had had to face that problem when he had studied certain situations engendered by disability and he shared Mrs. Warzazi's views.

23. Mrs. Ksentini's report on human rights and the environment (E/CN.4/Sub.2/1991/8) was particularly signficant. He would like to see some comments on the relationship between the environment and armed conflicts; in that connection, it would be helpful if the Special Rapporteur could attend the International Conference of the Red Cross to be held in Budapest and at which such a topical issue would certainly be discussed. As a rule, the problems posed by the environment also had an international dimension which it would be useful to explore in view of the inadequacy of international standards in that regard. It was highly likely that the relationship between human rights and the environment would also be discussed at the World Conference on Human Rights. He would have liked the Special Rapporteur to make some suggestions on the future organization of her work and the priorities to be set. Thought should also be given to what could be done, for example, in the context of the United Nations Technical Assistance Programme under which extremely important activities for the preservation of the environment had been carried out in Paraguay. People should be made aware of the problems affecting the environment and it would be helpful if in her final report Mrs. Ksentini could also address the issue of the terrible consequences of certain ecological phenomena such as desertification not only for the present but also for future generations.

24. Mr. van Boven's report (E/CN.4/Sub.2/1991/7) showed that the principle of reparation for victims of human rights violations was well established. However, it was also obvious that there was no mechanism for verifying whether States in effect applied decisions concerning compensation for victims of violations taken by certain organs such as the Human Rights Committee. The Human Rights Committee was currently considering ways of making its decisions effective. In view of the importance of reparation for victims of gross violations of human rights, the question needed further thought. He regretted that time constraints did not permit him to comment on other issues coming under agenda item 4. Indeed, that lack of time indicated that it might be appropriate to modify the Sub-Commission's working methods.

25. Mr. Türk took the Chair.

26. Mrs. DAES said that in her view the updated report on the right to freedom of expression and opinion submitted by Mr. Joinet and Mr. Türk (E/CN.4/Sub.2/1991/9) and also the preliminary report on the same subject (E/CN.4/Sub.2/1990/11) constituted an analysis of article 19 of the Universal Declaration of Human Rights and of the International Covenant on Civil and Political Rights; that article formed one of the cornerstones of democracy. The report contained important new ideas particularly in chapter I (B), paras. 21 to 23 dealing with prisoners of opinion whose situation would probably be considered by the Working Group on Arbitrary Detention established under Commission resolution 1991/42. She agreed with the Special Rapporteurs

that detention was a measure that led to numerous human rights violations, arbitrary detention in particular when it was used to reduce people to silence or to restrict their right to freedom of opinion. The detention of any person by reason of his opinions was by nature arbitrary and she supported the idea advanced in paragraph 22 of the report that all the work done by the Special Rapporteurs should be communicated to the Working Group on Arbitrary Detention in order to facilitate its task.

27. With regard to the restrictions on the right of freedom of expression in certain circumstances stipulated in article 19, paragraph 3, of the Covenant, she shared the views of the Special Rapporteurs on the question of permissible restrictions. She would like to add to the principles governing legitimate restrictions set out in chapter III of the preliminary report the principle whereby the restrictions permitted under the Universal Declaration of Human Rights and the International Covenants on Human Rights must not be applied for any purpose other than those for which they had been prescribed by law, as well as the principle of the prohibition of the abuse of power by Governments or other State authorities. Finally, with respect to the concept of "democratic society" she recalled that the term "democracy" had a long history and applied to a form of Government by the people and in which political power was held by many rather than by one or a few. There was no democracy when a minority dominated a majority deprived of freedom and a democratic society was a society that respected human rights and fundamental freedoms such as freedom of conscience, expression, and association, and the right of everyone to take part in political life at the local and national levels, through free and periodic elections. Only such a democratic society could provide adequate guarantees that the grounds for permissible restrictions were not misused to oppress individuals or prevent them from expressing themselves. Finally, she supported the proposals made by the Special Rapporteurs with a view to the preparation of their final report.

28. Mrs. Warzazi's report on the extremely delicate and complex question of traditional practices affecting the health of women and children (E/CN.4/Sub.2/1991/6) constituted a model study and a valuable contribution to the protection of the life of women and to respect for their rights and fundamental freedoms. She therefore strongly supported the proposal for the question to be retained on the Sub-Commission's agenda and that the mandate of the Special Rapporteur should be extended for two years to enable her to submit a plan of action for the elimination of those harmful practices which affected the health of thousands of women in several regions of the world and particularly in Africa. She also thanked the Centre for Human Rights and the Government of Burkina Faso for organizing a seminar on the subject.

29. Mr. KHALIL said that he was pleased that in her report on human rights and the environment (E/CN.4/Sub.2/1991/8), Mrs. Ksentini had pointed out, and rightly so, that the Stockholm Declaration of 1972 and the African Charter on Human and Peoples' Rights stated the principle that all people should have the right to a general satisfactory environment favourable to their development. She also analysed the constitutions of a number of countries, in which the right to the environment was formulated fairly explicitly, thus reflecting the importance given to that question today. Although she did not give a decisive answer to the question of whether the right to the environment was a reality, she nevertheless highlighted the need to give that right a legal basis, in

order to protect it and guarantee its application; that posed problems in so far as in order to guarantee its observance, States would have to take positive measures and not simply desist from certain actions. He endorsed the idea that the right to an environment of a high quality should encourage the exercise of all the other fundamental rights and in particular the right to appropriate development. The question of indigenous peoples' rights and the environment covered in chapter II of the report was particularly important because there were over 200 million indigenous people in the world and they usually had a very special and close relationship with the land and the environment in which they lived. Mrs. Ksentini's conclusions gave an idea of the work to be done in the field of human rights and the environment. He warmly congratulated her and wished her every success in her work.

30. He also congratulated Mr. Joinet and Mr. Türk on their report on the right to freedom of expression and opinion (E/CN.4/Sub.2/1991/9) and in particular on their very thorough study of the question of the legitimacy of restrictions to that right. He said that he was deeply grateful to Mrs. Warzazi for her work in preparing the final report on traditional practices affecting the health of women and children (E/CN.4/Sub.2/1991/6). He did not have time to comment on all the other reports submitted and he thanked all the special rapporteurs for the work they had done on extremely important questions, which, he hoped, would be kept under consideration.

31. Mr. MAXIM, commenting on Mrs. Ksentini's report on human rights and the environment (E/CN.4/Sub.2/1991/8), said that he recognized, as Mr. Eide had done, that no clearly defined right existed in that respect and that the question deserved further study. Nevertheless, it affected other fundamental rights such as the right to life and the right to housing and, besides, had a much broader scope because environmental problems went beyond borders. Every right had a corresponding obligation which the State should assume in respect of its citizens. If a right was violated, the State should offer compensation, but in the case of the right to the environment several States could be involved. Thus, for example, the construction of a nuclear power plant involved risks, not only for the population of the country in which it was located but also for the population of neighbouring countries or even for the populations living further away, hence the need for international solidarity. It would therefore be very helpful if Mrs. Ksentini could examine the question further and more thoroughly but it would perhaps be preferable to speak of the "principle of solidarity" rather than "right of solidarity" as she had done in paragraph 102 of her report. That solidarity should not be restricted to purely commercial operations but should take more active forms such as, for example, the transfer of non-polluting technologies. Lastly, she should also make a more thorough study of the question of responsibility because it was vitally important.

32. Mr. CHERNICHENKO said that like Mr. Treat he thought it unfortunate that the interesting reports submitted under agenda item 4 were being examined so late in the session. He hoped that in 1992 the item would be taken up earlier. He would not dwell on the question of traditional practices affecting the health of women and children because it was unfamiliar to him, but would rather address the question of ecological rights raised by Mrs. Ksentini in the document E/CN.4/Sub.2/1991/8. With the Chernobyl disaster, to which Mr. Maxim had already referred, the world had, as it were,

launched a nuclear bomb on itself. The question of ecological rights was therefore especially important and certainly deserved to be developed further in the future.

33. On the other hand, he was more familiar with the problem of the right to freedom of opinion and expression dealt with by Mr. Türk and Mr. Joinet in document E/CN.4/Sub.2/1991/9. While it was understandable that freedom of opinion and expression should be protected, as the observer for the United States of America had pointed out the day before, the Special Rapporteurs were right in highlighting that that freedom sometimes had to be restricted, for example, to avoid encroaching on the rights of others.

34. Regarding the problem of gross violations of human rights and fundamental freedoms, discussed by Mr. van Boven in his report, it was a matter of urgency for the Sub-Commission to discuss the violations of human rights perpetrated on the orders of the central authorities of the State, in other words, deliberate violations, which should be categorized as international crimes. The United Nations International Law Commission had in fact recently adopted a draft code on crimes against peace and security on first reading but the draft dealt with crimes committed by individuals in the exercise of their official duties and the subject was approached from the angle of criminal responsibility. However, violations of international rights occurred, which were the acts of Governments, in other words, subjects of international law. He recalled, in that connection, that in the draft articles on State responsibility drafted by a Special Rapporteur of the International Law Commission, reference had been made to apartheid and genocide. In the case of the crime of genocide in particular, it was paradoxical, for example, that the deliberate extermination of a group of people in Cambodia could not be considered as genocide within the meaning of the Convention on the Prevention and Punishment of the Crime of Genocide adopted in 1948. Isolated or recurrent cases of flagrant and massive violations of human rights could also occur.

35. In the light of the foregoing comments, he would prepare a one- or two-page working paper for the next session, on that aspect of the question, for discussion by the Sub-Commission which could decide on the format, either a declaration or a resolution, whereby flagrant and massive violations of human rights perpetrated deliberately by States could be officially denounced. He hoped that the Sub-Commission could devote some time to the problem at its next session.

36. Mr. ILKAHANAF said that he wished first of all to thank Mr. Joinet and Mr. Türk for their very full, lucid and informative report on the fundamental right to freedom of opinion and expression. The only restrictions that could be imposed on that right should be in conformity with international standards and legitimately applied within the meaning of article 9 of the International Covenant on Civil and Political Rights. The point at issue was the conditions in which that right could be restricted.

37. On the question of traditional practices affecting the health of women and children, Mrs Warzazi had submitted a report (E/CN.4/Sub.2/1991/6) which was interesting for those who were familiar with those practices but also for

those who were unfamiliar with them. The fact was that throughout the Horn of Africa, in particular, female circumcision was a common practice. The Sub-Commission should therefore not be in too much of a hurry to ban such practices but ought to encourage an awareness of the problem which would necessarily take a great deal of time.

38. In her very interesting report on human rights and the environment (E/CN.4/Sub.2/1991/8), Mrs. Ksentini referred for example to the importance of that right for the exercise of the other human rights and put forward the concept of ecological rights or the right to the environment. The study also made the point that underdevelopment had an adverse impact on the environment and that the right to life was directly related to the environment. The Special Rapporteur also observed that over 1 billion people in the third world were living below the poverty line and she addressed the problem of the transfer of toxic wastes. He therefore wished to reiterate how very important that preliminary report was.

39. He had also read with keen interest the interim report of Mr. Varela Quiros on discrimination against HIV-infected people or people with AIDS (E/CN.4/Sub.2/1991/10). Such discrimination was especially dangerous because it drove the victims to hide, to conceal their illness and not to seek care, all of which helped to spread the pandemic.

40. Mrs. COLLARD (International Committee of the Red Cross) said that international humanitarian law and human rights both derived from public international law. The first had originated as a result of suffering engendered by war and the second had been drafted in peacetime. Although there were two legal systems, containing different instruments and implementation machinery, they had drawn much closer in recent decades and in both substance and implementation.

41. With regard to substance, the article 3 which was common to the four Geneva Conventions of 1949, restated the fundamental provisions of the Universal Declaration of Human Rights and the two additional protocols of 1977, which contained provisions that represented the irremovable core of human rights instruments, particularly in respect of fundamental guarantees, the rights of persons deprived of their liberty and criminal proceedings.

42. As far as implementation was concerned, the human rights machinery dealt increasingly with situations of armed conflict (Afghanistan, El Salvador, etc.) whereas the humanitarian law machinery, especially the ICRC, were used in an ad hoc fashion and with the consent of the Governments concerned, in situations of violence that were not covered by humanitarian law. Thus, in 1990, the ICRC had visited nearly 90,000 detainees in 42 countries, in addition to 35,000 Iraqi prisoners of war.

43. While confusion of the two systems was not desirable, on account of their specificity, their complementarity should be encouraged, especially in the dissemination of relevant documents with the assistance of the Governments, Red Cross and Red Crescent national societies, the Centre for Human Rights, regional organizations and universities. In the "Guidelines for the '90s" on the dissemination of international humanitarian law which were to be adopted by the forthcoming twenty-sixth International Conference of the Red Cross and

Red Crescent, one of the main recommendations was to link the dissemination of international humanitarian law to other areas such as human rights and refugee law. Encouragement should be given to ratifying the instruments of both systems, as the Sub-Commission, the Commission on Human Rights and the United Nations General Assembly had recommended.

44. In that way, the mechanisms could be implemented while at the same time their specificity and diversity were respected (on-the-spot visits, access to victims, confidentiality of reports or, conversely, reports of Governments, deliberations in the context of the United Nations and publicity of debates and reports). In 1990, the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, had pointed out that the ICRC was competent to offer its services to Governments in situations not covered by international humanitarian law. In order to achieve a better mutual understanding of the instruments and implementation machinery, the ICRC was willing to strengthen its cooperation with the 165 States parties to the Geneva Conventions of 1949, with the Centre for Human Rights and with all the bodies concerned with human rights, including the Sub-Commission.

45. Mr. LITTMAN (World Union for Progressive Judaism) said that he deplored the fact, as in the previous year, that, in their study of the right to freedom of opinion and expression, Mr. Joinet and Mr. Türk, had not referred, even by implication to the Rushdie affair. It should therefore be recalled that the emissaries of death, inspired and armed by fanatical clerics, continued to roam the earth in search of victims, clamouring their right to censor and assassinate. The most recent victim had been the Japanese translator of Salman Rushdie's "The Satanic Verses", who had been killed in Tokyo on 2 July amid a general indifference. The Italian translator of the same work had barely escaped death on 3 July. The failure of the international community and the religious leaders whose spiritual values were being usurped, to condemn those crimes was tantamount to condoning them.

46. At the previous session, his organization had implored the Sub-Commission to denounce the ugly edict of 14 February 1989 and all that it represented once and for all. By resolution 1990/8, the Sub-Commission had condemned the assassination of Professor Kazem Rajavi, as well as every assassination or threat of assassination of political dissidents or other persons, wherever they lived, including their own country. It was obvious that, in adopting the resolution, the experts were all thinking of the Rushdie affair and its consequences. Why then had the experts, whose business it was to ensure systematic respect for the International Covenants on Human Rights, remained silent after the murder of the former Iranian Prime Minister, Shahpour Bakhtiar and on many other occasions? The time had certainly come for the Sub-Commission to adopt an unequivocal resolution condemning the death sentence of 14 February 1989 once and for all. From the viewpoint of the NGO community, the right to freedom of opinion and expression and the right to criticize and, if necessary, the right to condemn the unacceptable should never be abandoned within the United Nations.

47. Mrs. FARHI (International Council of Jewish Women) said, with respect to the right to freedom of opinion and expression, that there was no absolute freedom or democracy without rules and institutions, and therefore without constraints, otherwise violations against the right to safety would occur.

In the case of racism, permissible restrictions on the right to freedom of expression were governed by the criterion of proportionality, although the seriousness of the statement, the circumstances and the places in which they were made should also be taken into account. In other words, improper language on the part of a public person or a politician should be judged more severely. Still, in order to be consistent, should not the political system of the country where a case was being tried be taken into account? Wherever extremist parties enjoyed a legal status, it would be paradoxical to punish them for their statements and any intervention should be at a higher level of the process.

48. In paragraph 100 of their report on the question (E/CN.4/Sub.2/1991/9), Mr. Joinet and Mr. Türk raised the question of whether the abuse of expression could really justify deprivation of liberty. An isolated statement is of limited seriousness, but if it formed part of a systematic process of incitement to discrimination against any group whatever, it could induce people to action, mobilization, indoctrination and ultimately violence. The harm thus caused to society would surely be greater than that caused by a thief, who was often however, deprived of his liberty without compunction.

49. Still, a trial was just as important if not more so than any penalty imposed and for a trial to have any meaning, the defendant should have good reason to fear a penalty, otherwise the discussion would be purely academic.

50. Excessive tolerance led to a tragic form of democracy that destroyed on the one hand what was built up on the other. In order to judge cases of racism, the judiciary might first study the phenomenon by referring to the work of Michel Wievorka who identified four levels of racism: first of all, xenophobic doctrines and prejudices circulating in an unorganized way; secondly, open expressions of racism but which were still not on a large scale; thirdly, an established movement that was the mainspring of a political force which encouraged the use of violence as a means of seizing power. Lastly, there was State racism, the consequences of which were unfortunately only too well known. The shift to the political arena only served to unify heterogeneous forces and consequently any such unification should be prevented by minimal penalties and in France, for example by outlawing the National Front.

51. Ms. LEAS (Human Rights Advocates and Natural Heritage Institute) congratulated Mrs. Ksentini on her excellent report on human rights and the environment (E/CN.4/Sub.2/1991/8). It was vitally important to understand the link between the two aspects of that report and to know what mechanisms would protect individuals and groups from environmental harm. The two organizations that she represented had already begun working on the legal and institutional aspects of that question jointly with well known persons and NGOs of all types. A report on their work was available to the members of the Sub-Commission. It was obvious that disasters caused by the manufacture of chemical products, the production of nuclear energy, the transport of dangerous waste etc., had had repercussions on the environment with serious consequences for human life. Mrs. Ksentini's report should therefore represent only the beginning of more thorough research.

52. She also pointed out that a new type of refugee had emerged. They constituted the majority of the world's refugees and were fleeing an environment which had become hostile. Humanitarian law had an increasing role to play in protecting people against environmental damage. The Human Rights Committee had already reached the conclusion that the dumping of dangerous waste could be a violation of the right to life.

53. Mrs. Ksentini had recalled that States had an obligation to respect the right of access to information about activities that could jeopardize the health of individuals and groups and the right of the latter to have a say in decisions concerning those activities. The fact was that the public could not protect itself if it had no say in decisions. States were also bound to assess the public health risks of dangerous activities and to inform anyone who might be exposed to them. Similarly, they should adopt measures to prevent any damage to the environment which threatened life, health or other human rights. Mrs. Ksentini's study would provide considerable contribution to the work of the United Nations Conference on Environment and Development. It would be advisable for the Sub-Commission to decide that Mrs. Ksentini should continue her study, that all necessary assistance should be made available to her, especially in evaluating any documents on human rights and the environment which might be useful to her, and that arrangements should be made for her to participate in the United Nations Conference on Environment and Development.

54. She also congratulated Mr. Türk and Mr. Joinet on their excellent report on the right to freedom of opinion and expression and said that she looked forward to their conclusions and recommendations on the right to seek and receive information, including information on the environment.

55. Mr. FERNANDEZ (International Organization for the Development of Freedom of Education - OIDEL) congratulated Mr. Joinet and Mr. Türk on their excellent reports on the right to freedom of opinion and expression (E/CN.4/Sub.2/1990/11 and E/CN.4/Sub.2/1991/9). They had not included the freedom of education among the elements constituting that right, although it was guaranteed by article 18 of the International Covenant on Civil and Political Rights, but the connection between freedom of education and freedom of opinion and expression was so close that it was difficult to conceive of one without the other. The Rapporteurs could, in that connection, draw on a report published by OIDEL on the links between those two types of freedom.

56. The growth of pluralism, which was a condition of a democratic society, included freedom of expression and therefore freedom of education. Indeed, when States yielded to the temptation of controlling society as best it could and attacked pluralism, those were the two freedoms they undermined, in particular the second, because education appeared to them as the ideal instrument with which they could produce the men and women they needed. Education in fact influenced both the formulation and the expression of thought. The monopoly of the State in the area of education considerably weakened pluralism of thought and its expression and consequently, the spirit of democracy.

57. Mr. SIMPSON (International Commission of Jurists) took the floor very briefly to encourage Mrs. Ksentini to continue the work she had started with her highly interesting preliminary report. In the process, she should maintain her practical approach because it had enabled her to demonstrate how closely the environment and human rights were linked. She had made a valuable contribution to the research undertaken to deal with the very serious ecological crisis facing the planet. He said that more details could be found in the written text of his statement.

58. Mrs. BLOCH (Minority Rights Group) stressed that there was a fundamental relationship between the peace and security of the international community and the rights of minorities. That relationship had recently been highlighted by the Gulf crisis. However, the United Nations and its human rights apparatus remained unable to resolve minority disputes. In the case of the Kurds, for example, despite her organization's warnings that unless a strong message was sent to States that violated the provisions regarding the use of chemical weapons - such as those used against the Kurds - there would be a danger of further violations. In that connection, she said that it was regrettable that the Sub-Commission had not voiced an opinion on the use of chemical weapons and the violations of the Convention on the Prevention and Punishment of the Crime of Genocide that could be caused by their use. The MRG was concerned at the apathy of the international community in the face of the Turkish Government's repression of those populations and felt that the Sub-Commission should react promptly and very firmly. On the other hand, the Commission on Human Rights had done well to take decisive and determined action in respect of human rights in occupied Kuwait and on the question of human rights in Iraq.

59. Another minority had been created by the United Nations when it had sought to solve the problem of the Jewish population which had survived the Second World War, because the Organization had not consulted the Palestinians living in the region. The situation had deteriorated to such a degree that it had become a constant threat to international peace and security and demonstrated that minorities should be consulted before taking any decision affecting them. She hoped that the draft resolution E/CN.4/Sub.2/1991/L.43 concerning the situation in the Palestinian territory and other Arab territories occupied by Israel would be adopted. If the Kurdish and Palestinian populations as well as the other minorities in the region were not included in the current peace negotiations, the prospects for peace in the Middle East would be extremely poor.

60. The MRG therefore suggested that the Sub-Commission should request that the Centre for Human Rights should be provided with enough funds to enable it, in case of a negotiated settlement in the Middle East, to follow up the application of that settlement in so far as human rights were concerned and to offer all the necessary advisory services and expertise. It was of the utmost importance that the minorities should participate fully in that process.

61. Ms. RAS-WORK (International Movement for Fraternal Union Among Races and Peoples) said that she was also speaking on behalf of the Inter-African Committee on Traditional Practices Affecting the Health of Women and Children, and many other international organizations, including the International Alliance of Women, ZONTA International, Socialist International Women, the International Council on Social Welfare, the World Union of Catholic Women's

Organizations, the Anti-Slavery Society for the Protection of Human Rights, Associated Country Women of the World, Soroptimist International Association and the International Council of Women. Those organizations were entirely satisfied with Mrs. Warzazi's final report. It highlighted the fact that the traditional practices which affected the health of women and children constituted an ongoing violation of women's human rights. It showed how those practices undermined the inherent dignity of all the members of the human family and how the women, who underwent mutilations and were discriminated against in favour of male children and were the victims of nutritional taboos, had no form of social security but marriage. Furthermore, their economic contribution was underestimated because it was not formal. Those disparities between boys and girls were also the result of a high illiteracy rate among women and early childhood marriages. The persistence of those harmful practices was a real waste of human resources, it perpetuated the inequalities and led to extreme rates of maternal and infant mortality and morbidity. In addition, they were contrary to the Universal Declaration of Human Rights, the provisions of the International Covenant on Economic, Social and Cultural Rights and in the case of children, they contravened article 24 of the Convention on the Rights of the Child to which the signatory States should adapt their legislation.

62. The issue of traditional practices was obviously an essential part of the work of the Sub-Commission and she fully supported Mrs. Warzazi's recommendation that the subject should be kept on the agenda for follow-up action. However, those problems were not confined to one continent alone and she welcomed the fact that early in 1992 a seminar on the subject would be held in Asia similar to the one that had been held in Burkina Faso. In order to eliminate those practices, an integrated approach was needed, one which combined legislative measures with major commitments by Governments as well as the creation of an awareness among the population as a whole.

63. The non-governmental organizations on whose behalf she spoke wholeheartedly endorsed the recommendation that a full-time professional should be appointed to the Centre for Human Rights to support the educational work in that area. That person should also be mandated to act as a focal point for the work that was being done on that issue in other parts of the United Nations system. Governments should also make every effort to collect information across the spectrum of national activity, which the non-governmental organizations should circulate, and funds should be made available for the sending of fact-finding missions, indicators should be developed for assessing the level of public awareness concerning the dangers of those practices, and Mrs. Warzazi's mandate should be extended to enable her to continue her study.

64. Mr. KOTHARI (Habitat International Coalition) congratulated Mrs. Ksentini on her report on human rights and the environment and in particular on having pointed out the link between the right to development and the right to a safe environment. However, that link needed to be clarified and should be related more to the living conditions of people and communities. It was, in any case, obvious in the right to a place to live, because that was where the struggle for survival began. That right to housing demanded the right of access to clean water, fuel, building materials and health care in a pollution-free environment. That environment was under threat the world over and development

conceived selfishly in the interest of a few was usurping the resource base on which millions of people depended, and as a result they were being forced to live in unhygienic conditions that were unsatisfactory from all points of view, for example, in close proximity to industrial, chemical, nuclear or other complexes, in violation of their right to live in a safe environment. Ways and means should therefore be found to prevent ecological disasters and to regenerate the resource base, otherwise homelessness, migration, and dependence on government and private handouts would increase and the dispossessed would use violence to demand that a stop be put to the violation of their rights.

65. If Mrs. Ksentini's study succeeded in bringing home the precariousness of the situation of more than 1 billion of the world's inhabitants, it would certainly be useful in the formulation of the agenda of the United Nations Conference on Environment and Development. However, there was a very serious omission, namely that the knowledge and skills of the local population in taking care of the surrounding environment had not been taken into consideration, or the consequence of decisions on the environment that were taken at levels from which the local communities were excluded. Those communities were often the victims of measures to protect the environment, such as the "beautification" of towns, of "urban development", and the development of national parks, which were all activities undertaken in the name of preserving nature but which, in fact, were pursued to the detriment of the inhabitants of the areas in question. Recognizing the struggle of local communities for housing rights could be the means of developing environmental awareness and of regenerating nature.

66. Ms. ADAMS (Sierra Club Legal Defense Fund) speaking also on behalf of the Friends of the Earth, congratulated Mrs. Ksentini on her excellent preliminary report on human rights and the environment because, inter alia, it drew together a whole range of human rights and other legal instruments which were linked to the right to a sound and healthy environment. Mrs. Ksentini had taken a pragmatic approach and had strongly advocated the establishment of procedures and mechanisms to implement the environmental dimensions of already recognized human rights. Additional time should be spent drafting new standards and investigating the special problems of indigenous peoples, whose survival was so directly dependent on the continuing replenishment of an environmentally sound land base. Those were the people in greatest danger of slipping into extreme poverty and homelessness if their environment was destroyed. The world had not yet found an adequate way of compensating people for environmental disasters caused by mindless development. The individuals and groups affected should therefore have rights which enabled them to prevent the destruction of the environment, even before development and financing decisions were made. It was encouraging to see that Mrs. Ksentini had recognized the importance of prevention. Information on environment impacts should be disseminated; the decision-making process should be public and all aspects, good or bad, of development projects should be heard by an independent tribunal with the authority to enjoin actions that could jeopardize human rights and the environment.

67. Time did not allow her to comment on the report of Mr. Türk and Mr. Joinet or that of Mr. van Boven which could usefully compliment that of Mrs. Ksentini.

68. Mr. PORRET (International Fellowship of Reconciliation) said that he was pleased with the excellent report submitted by Mrs. Ksentini, which very rightly highlighted the links between all the elements of life, including, nature which was increasingly at risk on all continents. Nature should therefore be given total protection against all current threats. Those threats took many forms: mindless use of resources; reckless planning; excessive use of pesticides; misuse of mercury and of dioxine; indifference to the problems caused by atomic radiation etc. They were further compounded by armed conflicts; there was, for example, no way of knowing the exact extent of the damage caused to local populations by the burning of hundreds of oil wells. Lastly, there was the lure of profit that prompted powerful forestry exploitation companies for example to use heavier and heavier machinery to uproot trees; the damage wreaked far exceeded that caused by the burning of land for farming and wood gathering, both methods used by the poor and often severely condemned.

69. His organization hoped that, at its 1992 session, the Sub-Commission would take time to study the results of the Conference on Environment and Development.

70. Mr. de VARGAS (War Amputations of Canada) congratulated Mr. van Boven on his excellent preliminary report on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights. A study of that nature could provide a strong incentive for the establishment of international standards that would require countries that had committed gross violations of human rights to compensate the victims of those violations. That right should become part of international humanitarian law and he hoped that the international conferences like the one held in Ottawa in May 1989 would encourage progress in that direction. Indeed, rights without remedies were illusory. Furthermore, article 8 of the Universal Declaration of Human Rights provided that "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the Constitution or by law". In that connection, the Geneva Conventions were a clear example of a legal vacuum because although they provided the right to compensation, they did not provide the procedural mechanism for demanding that compensation. Only Governments which made claims against Governments responsible for violations could have their claims satisfactorily resolved. It was significant, in that regard, that the draft resolution on the right to compensation currently being studied by the Sub-Commission provided that the individual had the right to initiate a claim for compensation himself. The number of claims made by the victims of atrocities committed during the Second World War were proof of the need for an effective compensation mechanism.